

BEFORE THE
REGULATORY ENERGY REGULATORY COMMISSION

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PUBLIC MEETING: :

OPEN SESSION :

RECUSALS AND STATEMENTS :

NOVEMBER 20, 2002 :

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Commissioners Meeting Room 2C

Federal Energy Regulatory

Commission

888 First Street, NE

Washington, DC

Wednesday, November 20, 2002

The above-entitled matter came on for meeting,
pursuant to Notice, at 10:50 a.m.

BEFORE:

CHAIRMAN PAT WOOD, III

COMMISSIONER LINDA KEY BREATHITT

COMMISSIONER NORA MEAD BROWNELL

COMMISSIONER WILLIAM MASSEY

SECRETARY MAGALIE ROMAN SALAS

C O N T E N T S

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1. Joint Presentation by Richard Howe (OGC)
2. Presentation by Lodie White (OGC)
Phil Nicholson & Jim Akers (OMTR)
3. Presentation by Kim Bose

PROCEEDINGS

(10:50 P.M.)

CHAIRMAN WOOD: This open meeting of the Federal Energy Regulatory Commission will come to order to consider the matters which have been duly posted in accordance with the government and the Sunshine Act for this time and place. Please join in the pledge to our Flag.

(Whereupon, the Pledge of Allegiance recited.)

CHAIRMAN WOOD: Good morning, Madam Secretary.

SECRETARY SALAS: Good morning, Mr. Chairman, and good morning commissioners. The items that have been struck from the agenda since the issuance of the Sunshine Notice on November 13 are as follows: E-18, E-46, E-47, E-49, G-7, G-18 and M-1.

Your consent agenda for this morning is electric items: E-6, E-7, E-9, 10, 11, 13, 15, 16, 17, 12, 19, 21, 22, 23, 24, 26, 33, 27, 30, 32, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 48, 50, 51, 52, 53, 54, 55, and 57. Gas items: G-10, 11, 12, 14, 15, 16, 20, 21, 23, 24, 25, 26, 27, 28, 30, 31, 32, 36, 37, 38. Hydro: H-1, 4, 5, 6. Certificates: C-1, 2, 3, 5, 6, and 7.

Specific votes for some of these items -- for one of these items is E-30, Commissioner Breathitt dissenting in part and Commissioner Massey votes first

this morning.

COMMISSIONER MASSEY: Aye.

COMMISSIONER BREATHITT: Aye, with personal dissent as noted.

COMMISSIONER BROWNELL: Aye.

CHAIRMAN WOOD: Aye.

SECRETARY SALAS: The first item for discussion this morning is E-2, Ameren Services Company with a presentation by Lodie White, Phil Nicholson, and Jim Akers.

MS. WHITE: Good morning, Mr. Chairman and Commissioners. I am Lodie White. With me are Phil Nicholson and Jim Akers. This Order conditionally approves the proposal by Ameren Services Company to acquire Central Illinois Light Company CILCO, and AES Medina Valley Cogen.

The Order finds that a proposed acquisition, subject to certain conditions, will not adversely affect competition rates or regulation. In particular, applicants have committed to increase import transmission capability into the CILCO, Ameren and Springfield control areas by constructing transmission upgrades.

In the interim, pending completion of the first transmission upgrade, Ameren has agreed with the

Illinois State Commission staff to sell to non-affiliated entities 100 megawatts of power and energy. Then Ameren may reduce the amount of the sale to 50 megawatts to continue until completion of the second upgrade. During the period that the transmission upgrades are being constructed, applicants have offered to extend the contracts of their wholesale customers.

The Order finds that an additional significant factor is the fact that applicants have committed that both utilities will be participating in the Midwest ISO, an action that is essential to the approval of the transaction. As a result, the Midwest ISO scope will be broadened. Thank you. If you have any questions, please let us know.

CHAIRMAN WOOD: Any thoughts on this one?

COMMISSIONER BROWNELL: I just wanted to thank the Illinois staff for I think some very thoughtful analysis and hard work, and I am pleased with this on a number of fronts. Certainly, joining MISO fills in some holes in the map; but, secondly, I think we are finally seeing what we have been waiting for, and that is, real investment in transmission, which is so critical to every region of this country, so I am glad. We will be getting regular reports on that, will we

not, so that we can track and make sure that that is happening on an efficient timetable? Quarterly reports; is that correct?

MS. WHITE: Yes. We have required them to give quarterly reports.

COMMISSIONER BROWNELL: Super. Thank you.

CHAIRMAN WOOD: Since I have been here, this is the first merger that had really horizontal market power as at least a threshold issue, and I am pleased with the thoughtful approach to it. There are a number of ways to address aggregation and concentration. I think the way that it is addressed is very thoughtful and pragmatic and I look forward to seeing these companies, and support the merger.

COMMISSIONER MASSEY: My own view is that the Commission's process of reviewing mergers is very much in the public interest and very useful to the industry as a whole and to the citizenry of the nation. Especially as we move these cases along * delayed them but render a decision on them within a very reasonable period of time as I think we did in this case.

Shall we vote?

COMMISSIONER MASSEY: Aye.

COMMISSIONER BROWNELL: Aye.

COMMISSIONER BREATHITT: Aye.

CHAIRMAN WOOD: Aye.

(Whereupon, the motion was carried.)

SECRETARY SALAS: This is an item for discussion this morning, E-4, Midwest Independent Transmission System operator with a presentation by Steve Pointer, Kim Bose, Thajauna Miller, and Patrick Cleary.

MR. POINTER: Good morning. My name is Steve Pointer and with me at the table are Kimberly Bose, Thajauna Miller and Patrick Cleary. Our presentation involves E-4, an Order on the U.S. ISO's proposal to include a cost associated with FTRs and markets.

This Order recognizes and supports the efforts, the furtherance of the Commission's mission to develop a standardized market and to work quickly to create a single market spanning a geographic area of New Jersey in the East to the Rocky Mountains in the West. Today's order if the Commission accepts USISO's proposal for filing subject to additional, limited procedures. This concludes my presentation. Thank you.

CHAIRMAN WOOD: MISO Needs to get moving with the timetable we have approved in the alliance orders in the summer, I believe it was, with the integration

of the single energy market across the entire PJM MISO SPP footprint. I look forward to that, and think this order facilitates that effort. For that reason, I think it is worthy of all of our support. I want to thank you four and your colleagues, too, Patrick and Thajauna and Kim and Steve for working on this a lot. You turned it around very fast, and did a nice job of getting it done well. Congratulations to you as well. Let's vote.

COMMISSIONER MASSEY: Aye.

COMMISSIONER BROWNELL: Aye.

COMMISSIONER BREATHITT: Aye.

CHAIRMAN WOOD: Aye.

SECRETARY SALAS: The next item is a joint presentation G-19 and G-22, Algonquin Gas Transmission Company and Texas Eastern Transmission with a presentation by Richard Howe.

MR. HOWE: Mr. Chairman and Commissioners, the draft orders in G-19 and G-22 take action under NGA Section 5 to require Algonquin Gas Transmission Company and Texas Eastern Transmission Company to modify the right of first refusal provisions in their tariffs. Both pipelines have long-term contracts with their firm shippers that continue indefinitely until either the shipper or the pipeline gives notice to terminate the

contracts. The notice must be given a year or more before the termination takes place.

The pipeline's tariffs provide that the customer has no right of first refusal if it gives the notice of termination. This means that unless the pipeline terminates the contract, the existing shipper would not have the opportunity to review a third party offer accepted by the pipeline before deciding whether to renew or terminate its contract for all or part of its capacity.

The draft orders find that this is contrary to the requirement in the Commission's regulations, that long-term firm shippers paying the maximum rate should be given the right of first refusal whenever their contracts terminate. The draft orders therefore require the pipelines to modify their tariffs, to give firm shippers the right of first refusal regardless of who gives the notice of termination.

Thank you.

CHAIRMAN WOOD: I really wanted to call these as really attention to the fact that in light of our last ruling on Roferd (phonetic) that we were going back, as we indicated to the court that we would, and address those that need to be done on a 206 style base, or a Section 5 bases. So, I appreciate the work,

Richard, highlighting that and bringing those out. I don't really have anything other to add.

So let's vote.

COMMISSIONER MASSEY: Aye.

COMMISSIONER BROWNELL: Aye.

COMMISSIONER BREATHITT: Aye.

CHAIRMAN WOOD: Aye.

SECRETARY SALAS: That is all for today, Commissioners.

CHAIRMAN WOOD: I wanted to make a couple of -- I usually call it happy time, but it isn't happy time, notes. One of our senior leaders here at the Agency, this is his last open meeting and I want to recognize Scott Miller back here (indicating) with OMTR, who is leaving to work, as I believe it has been now announced, with the PJM Interconnection around the first of December.

I want to just say, Scott, I appreciate your coming to the Commission. I knew you in my prior job and your prior job down working to help put markets together, and I am so pleased with the contribution you have made in your tenure here at the Commission.

You are one of our first external market hires that were done under the prior Commission, and did a lot to make this agency more responsive to market

needs. You assembled the first markets group, set up the market observation room, started the daily energy report, co-chaired the Commission staff's initial reports on the California crisis, which despite recent reports to the contrary actually did get it right. It was the implementation of that report, I think, that has taken a while, but certainly the analysis was solid.

You initiated the first derivatives training sessions for staff. I think personally I always recognized the need to make sure that balance market rules were there, because that is how infrastructure gets built, that is how customers get benefits from markets to work. I appreciate your carrying that flag high.

The personal leadership you provided to your colleagues on staff made it always fun to go down in the agency where you were working, because people down there, as they still do, had a sense of purpose and felt like they were contributing and making a difference for this nation's energy customers. You will be missed, and please know that you were and will be appreciated.

Thank you very much.

(Applause.)

CHAIRMAN WOOD: Five years ago yesterday, a smart, sweet, charming Southern bell put her hand on a "Bible" and said that she would do her best to adhere to the constitutional laws of this country. It does become a bit of a goodbye toward the end of the term, but I think I want to make today more of a celebration of your fifth-year anniversary on this Commission which is, if you look at the wall, it is something that actually quite a few of the folks that have been here have not achieved. I want to just say that I will turn it over to our senior commissioner to speak further.

COMMISSIONER MASSEY: Why thank you, Mr. Chairman.

(Laughter.)

COMMISSIONER MASSEY: I like that, "our senior commissioner."

(Laughter.)

COMMISSIONER MASSEY: I have really enjoyed my five-year relationship with you, Linda, my lone, fellow Democrat on the Commission. Not that we function on a partisan basis, but you and I have served together now these five years and you have always been professional and thoughtful and unfailingly courteous and steady. You really kick some but on back haul, you know.

(Laughter.)

COMMISSIONER MASSEY: I wanted to point that out. Your moderate voice, I think, has always been highly respected here. You have never been shrill. You have occasionally been cranky, like all of us. I just wanted to say that I will miss you and that I have enjoyed serving with you, and I wish you well.

COMMISSIONER BROWNELL: This is hard. How come this stuff never gets any easier? I have known Linda and she has been a friend and mentor since I was a first day state commissioner when she offered me great guidance and often moral support as we were restructuring in Pennsylvania, and certainly has been and will continue to be a role model in so many positive ways.

Resolve is what I think of when I think of you. You have been through a period in the Commission that I think is unprecedented, and shown flexibility, leadership and courage of you conviction. On any given day, I think that is as good as it gets.

I also want to applaud your leadership and commitment to our colleagues in India as they begin to transform their markets to get ready for the future. Your personal commitment has really, truly been wonderful. I know from speaking with some of our colleagues in India that it has really made a

difference. We hope that we can make a difference in the positive ways that you have both here and abroad.

Thank you and we will continue to have lots of fun together, because friendships don't end with people's terms in office.

CHAIRMAN WOOD: I should have gone first. How did I do that? Linda, you know, you and I both met a little over five years ago when you were both on the Kentucky Commission. You knew what was going to happen in your life, but nobody else did. We were up in Portland, Maine, and that is when Cathy and I got to know you and love you as we do now.

I just want to say without a whole lot of -- I can't improve on what you just heard, but I am going to miss you a lot. I think your sense of balance when the three of us were ready to careen somewhere your little, gentle reach under my belt, pulling me back in from jumping out the window did a lot to help us. I don't know who is going to fill that role now. Cindy.

(Laughter.)

CHAIRMAN WOOD: When you have got aggressive colleagues, you hire a conservative general counsel, and when your thoughtful, pragmatic friend who knows where the bodies are buried is wandering. I will find a way to track you down. If I can legally talk to you

about this stuff, don't worry I will.

Linda, your presence will continue on. It has been fun to be a colleague of yours. I have appreciated your sense of commitment to what we are about, about getting the balance and the rules right, about the need to have the infrastructure be incense, your concern for the proper signals that we send to the investment community and the customers both is a perspective that I hope we can embody, but we will miss it a lot.

I enjoyed my stay in your home state and see why you are the way you are. It is a wonderful, wonderful place, and you are proud to be a product of it.

I appreciate your integrity and your honesty. I can't tell you how much it means to work with somebody who you know is starting from the right point, and seldom if ever wanders at all from that. That is something that those of us in public service can't always count on. It has just be a wonder to be your colleague.

On behalf of not only myself and my two here, but of our entire Agency, the five-year thing was actually a wonderful opportunity because I'm not sure that this is your last meeting, but I am not going to

miss a shot at doing this, which is to give our rare but wonderful, Exemplar Public Service Award to Linda Key Breathitt, who is deemed an exemplar public servant for a distinguished career in pursuit of the vision mission and values of the Federal Energy Regulatory Commission. We wanted to all give you that and thank you for the wonderful five years that you have given to FERC.

(Whereupon, a standing ovation and photographs of Commissioners.)

COMMISSIONER BREATHITT: I told Pat to pinch me if I started getting teary-eyed, so I'm going to take a sip of water. Well, this is pretty likely to be my last meeting. We have consulted with the attorneys about what is happening in the Congress. We think that they are going out sine die, so it is very likely to be my last meeting.

I couldn't pass up this opportunity to thank my staff, who all of my current staff are sitting with me today. Jean Womack who started with me back in the eighties in the Kentucky-Washington Office is here, Linda Lynch, Debra Young and Pam Swinson who is not here have provided wonderful support. Many of you have talked to them on the phone.

Coming along the bench is Jennifer Shepherd.

Jennifer has really been a wonderful electric assistant and has, as many people have said, really grown on the eleventh floor when she came up from being an analyst and an order writer and was in the throes of the California orders to coming up and rolling up her shirt sleeves and sharpening her elbows and really providing a tremendous amount of service in all of the long pre-agenda meetings, coming in on Saturdays and working on standard market design with the rest of the team.

Mark Schaffer who has been a wonderful detail to my office these past few months. Thank you, Mark. Mark has served for several commissioners, Commissioner Bailey and Commissioner Terzic, so when I needed another hand Mark was certainly an easy choice to make.

Dave Faerberg, who has been a wonderful legal advisor technical advisor, but has also handled hydro and oil pipelines and now electric cases, has been a wonderful addition to my team for almost a year. I thank you, Dave, for all of our sound guidance and advice on some pretty tough orders and rulemakings.

I would also like to recognize Mary Bench, Chris John and Mike Alexander, who were the original part of the Breathitt office and who are not here today, but are probably watching from their offices

downtown.

The senior staff and the professional staff who I have worked with over five years are the most dedicated group of public servants that I have ever worked with, and they will continue to provide a very steady, reasoned influence here at the Commission and produce really fabulous orders and work for all of us to consider. I have worked with a wonderful group of public servants starting with Chairman Hoecker and Chairman Hebrt, Commissioner Vicky Bailey, and now with Chairman Pat Wood.

I have tremendous admiration and respect for, Bill, you and Nora and Pat. You are a wonderful group of three commissioners, and I think that you will continue to lead this agency as a body of three until you get two new colleagues, and then you can get into all kinds of mischief when the five of you are here together.

You, the three of you, are all interested and active in removing barriers to healthy competition and protecting consumers' interests. I thank you for the influence that you have had on me. Bill, you have been a wonderful stalwart and champion throughout the California crisis. You have helped all of us, particularly me, in guiding the numerous Commission

responses to that. You have really been, in my opinion, the main player in helping us do the right thing on California, and a lot of people can thank you for that.

For myself I could not have served during a more important time in our nation's energy industry development. When I first arrived, the Commission was touting lighter-handed regulation. Do you remember those days? We were in the implementation phase of Order 888, and we were hotly debating dam decommissioning. Gas pipelines were being certificated to provide a lot of needed gas to the Northeast.

I am not going to go through a litany of contributions, because we have had so many rulemakings and NOIs since I have been here that it would take us through the lunch break to do that. I would like to talk about a few of the issues that I have worked on and positions I have taken.

I guess first and foremost is RTO development. It is well along across the country, in spite of naysayers who disagreed with the voluntary nature of RTOs. I agree that they are almost all entities who have selected an RTO to be in, and I am very proud of that. It is something that the Hoecker, the Aber, and now the Wood administrations are championing and have

furthered the development along with that.

Independent transmission companies have gone from a white paper concept to a reality, and that is the model that I have championed and been very proud of. Other matters that have occurred during my five years are response to the Midwest price spike, which I thought was an appropriate response. Landowner notifications, which have made it easier for landowners to be involved in pipeline cases.

Certificate policy statement, revised complaint procedures, revised merger policy statement, and of course the numerous and difficult issues addressed orders on the California and Western energy crisis. That has probably consumed more of the Commission's time in the last two years than any other policy and regulatory matter, I would venture to say, in the history of FERC.

The Commission I believe is well on their way through Chairman Wood's leadership to successfully complete a lot of those dockets, and will be able to move on with healthy markets in that part of the country. It has been a very busy and rewarding five years.

I will end there and once again thank all of the staff for a tremendous response to very difficult

situations and the support that they have accorded and afforded me in my office, the numerous briefings we have had and all of the hard work that we do. Thank you all.

My plans are most likely to stay in the Washington, D.C., area so I hope that I will continue to cross paths with many of you at conferences.

Pat, where we can permissibly and legally talk, I am sure that we will. I think you are a terrific chairman and you are leading the Agency in a very sound, pragmatic way.

CHAIRMAN WOOD: Thank you, Linda.

(Applause.)

CHAIRMAN WOOD: Meeting adjourned.

(Whereupon, at 11:25, the meeting was adjourned.)

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